

REMARKS

Claims 1-4, 6, 8, 11, and 12 are pending in the application. The Examiner's reconsideration of the rejections in view of the amendments and remarks is respectfully requested.

Applicants appreciate the withdrawal of the 102/103 rejections.

Claims 1-4, 6, 8, 11, and 12 have been rejected under 35 USC 101 as being directed to non-statutory subject matter. The Examiner stated essentially that the claims preempt all uses of the algorithm.

The doctrine of preemption requires determining whether a claim would, in reality, preempt the use of a law of nature or abstract idea. The doctrine of preemption is applicable to mathematical formula without a practical application, among other things. While one may not patent a process that comprises every substantial practical application of an abstract idea, because such a patent in practical effect would be a patent on the abstract idea itself, the claims of the present application are clearly presented in terms of a computer readable medium (see Claim 1). Accordingly, the claims are not directed to mere abstract ideas but include limitations that are both concrete and tangible. Further, consider the method steps of receiving “input data describing the n jobs, the duration, and the revisit time for each of the n jobs; ... determining a feasible schedule”, which comprises substantial limitations outside the realm of mere abstraction such as a mathematical formula without a practical application. The claims clearly rise above the level of an abstract idea; the claims include a practical application to determining a schedule of

jobs. Consider that the claim requires the input of “n jobs, the duration, and the revisit time for each of the n jobs.”

Claims 2-4, 6, and 8 depend from Claim 1 and are believed to be allowable for at least the reasons given for Claim 1. Reconsideration of the rejection is respectfully requested.

Claims 12 has been rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement.

Claim 12 claims, *inter alia*, “determining a job number for each of the n jobs.” Here, Claim 12 has been amended to clarify the limitation, wherein “that is farthest from a corresponding theoretical probability” has been deleted. Entry of the amendment is respectfully requested. Support for Claim 12 can be found at, for example, page 14, lines 13-15, which states:

“The potential schedule, *seq*, is created by choosing the job *i* that is farthest from the theoretical probability, q_i . A function, *argmax*, returns the job number for the job *i*...”

In view of page 11, line 25 to page 12, line 9, it can be seen that a potential schedule is created (where sufficient iterations are performed to establish a trend for the jobs see page 10, lines 24-25) wherein jobs numbered. Thus, the function, *argmax*, returns the job number for each job in order to create a “potential schedule of the n jobs”.

The Examiner’s reconsideration of the rejection is requested in view of the foregoing.

Claims 1-4, 6, 8, 11, and 12 have been rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

With reference to the Examiner's first two points in the rejection (found on pages 4-5 of the Final Office Action); Claim 1 has been amended to clarify the relationship between the round robin and feasible schedule, wherein "determining from the input data whether it is impossible to generate a feasible schedule" has been deleted. Thus, where the round robin schedule is not possible a feasible schedule is determined. Entry of the amendment is respectfully requested.

Referring to the "theoretical probability", the "actual probability", and "creating a potential schedule" (points Three through Five); respectfully, any methods for performing the claimed limitations are contemplated. Claim 1 is believed to define the metes and bounds of the subject matter to be protected; one of ordinary skill in the art would understand that if a method determines "a probability that a job will be performed next", "a relative amount of time that each job is to be performed", and a "potential schedule" from the theoretical and actual probabilities, that it would meet the limitations in question. Further, Claim 1 when taken as a whole describes all the limitations needed to practice the claimed invention. Therefore, the limitations at issue are believed to satisfy the requirements of 35 USC 112, second paragraph.

Referring to point Six, the Examiner suggested that "searching for the feasible schedule...from the potential schedule" is not clear. In response to the Examiner's query concerning the potential schedule, the potential schedule is a schedule of length *num* that is arbitrarily chosen to be large enough that a trend of sequence visits is established. Thus, searching for the feasible schedule is a selection of a fragment of the potential schedule. This is well described throughout the specification, for example, at page 11, line 24 to page 12, line 12 and page 14, lines 17-23.

Referring to Claim 4, "z" is the "theoretical probability" as detailed in claim limitations.

“ k ” is a job with a smallest residual time (see for example, page 5, line 3). A “residual vector” is a sequence of revisit times, for example, see page 5, lines 9-20.

Referring to Claim 6, a theoretical probability for each job n is represented by the array, q_i (see for example, page 13, lines 19-20); in the specification $i=1 \dots n$.

Referring to Claims 11 and 12; Claims 11 and 12 have been amended to claim a “computer readable media”. Further, the limitation “farthest from a corresponding theoretical probability” has been deleted. Entry of the amendments is respectfully requested.

Reconsideration of the rejection is respectfully requested.

For the forgoing reasons, the application, including Claims 1-4, 6, 8, 11, and 12, is believed to be in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

Respectfully submitted,

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